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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,206	04/08/2004	Bill J. Hays	HAYS-201	7419
7590	01/12/2006		EXAMINER	
Robert E. Strauss 74527 Moss Rose Drive Palm Desert, CA 92260			MULLER, BRYAN R	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/820,206	HAYS, BILL J.	
	Examiner	Art Unit	
	Bryan R. Muller	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 October 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) 7-10 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6, 11 and 12 is/are rejected.
 7) Claim(s) 1, 2 and 8 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 08 April 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species 1 in the reply filed on 10/11/2005 is acknowledged. The traversal is on the ground(s) that there is no element of the tool in claims 7 and 8 which is recited in claims 1-6 which is replaced with an alternative element. This is not found persuasive because the examiner agrees that claims 1 and 6 are generic, thus, agrees that there is no element of the tool in claims 7 and 8 which is recited in claims 1 or 6 which is replaced with an alternative element. However, the elected species is represented by claims 2-5, which disclose a handle that **fixedly** receives the shaft, however claims 7 and 8, representing non-elected species 2, discloses that the shaft is **rotatably** received in the handle, thus, the handle of claims 7 and 8 (species 2) is inherently different than the handle of claims 2-5 (species 1).

The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. The drawings are objected to because reference number "52" in Figure 2 and number "72" in Figure 7 do not have leaders to point to any particular part. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

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canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because the abstract contains more than 150 words. Correction is required. See MPEP § 608.01(b).

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5. The disclosure is objected to because of the following informalities: There are two periods (.) after the phrase “FIGURE 3” in line 9 of page 3 of the specification. One of the periods should be deleted.

Appropriate correction is required.

Claim Objections

6. Claims 1 and 2 are objected to because of the following informalities: the term “means” is included in line 4 of claim 1 and line 1 of claim 2 referring to the “torque transmitting means”. The term “means” is generally only used in claims when the applicant is invoking 35 U.S.C. 112, 6th paragraph, but in this case the applicant fails to meet the requirements to invoke 35 U.S.C. 112, 6th paragraph. Please correct the claims to either properly invoke 35 U.S.C. 112, 6th paragraph or to replace the term “means” with another, more suitable term, such as “structure”. Appropriate correction is required.

7. Claim 8 is objected to because of the following informalities: although claim 8 is withdrawn for being directed to a non-elected species, the claim discloses “the electric motor” but does not have proper antecedent basis for the electric motor, it is assumed that the claim is intended to be dependent on claim 7 instead of claim 6. Appropriate correction is required if dependent claims are found to be allowable and claim 8 is rejoined at any point during prosecution.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12 is a method claim but is dependent upon apparatus claim 8 and is therefore unclear and contains several terms that lack antecedent basis. It is assumed by the examiner that claim 12 is intended to be dependent on claim 11, since claim 11 is the only independent method claim in the application. For the sake of the current office action, claim 12 will be treated as if it is dependent on claim 11. Appropriate correction is required.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergemann (1,783,070).

12. In reference to claim 1, Bergemann discloses a tool comprising a shaft (11) with one end terminating in a torque transmitting means (10) and, at its opposite end, having a working end, said working end having a slot (14) open to the end of said shaft and

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extending longitudinally along said shaft dividing said working end of said tool into two longitudinal segments (12 and 13), one of said longitudinal segments (12) extending beyond the terminus of the other segment (13) and terminating in a blade with a blade tip having thickness less than the thickness of said one longitudinal segment. Although the Bergemann reference does not disclose that the tool is for opening pull-tab closed containers characterized by a sealed container top having a failure line about the periphery of said top and having a tab permanently secured to said top adjacent a peripheral edge thereof, which is stated in the pre-amble of the claim, the claim is an apparatus claim, thus the intended use is irrelevant, and the tool of Bergemann anticipates all of the claimed structure of the claimed tool and is inherently capable of being used as claimed in the pre-amble of the claim. Therefore, the Bergemann reference provides a proper rejection for the apparatus of claim 1.

13. In reference to claim 2, Bergemann further discloses that the torque transmitting means comprises a handle (10), which fixedly receives the shaft (page 1, lines 45-48).

14. In reference to claim 3, Bergemann further discloses that the shaft is round (the type of break at the top of Fig. 3 is a break only used for round objects).

15. In reference to claim 6, Bergemann further discloses that the blade tip is flattened (best seen in Fig. 2).

16. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Osmar et al (5,095,777).

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17. In reference to claim 11, Osmar discloses a method of opening a pull-tab closed container (C) characterized by a sealed container top (L) having a peripheral failure line (around periphery of top) and a tab (R) permanently secured to said top adjacent a peripheral edge thereof, which comprises

- a. Grasping the handle (although a hand is not shown, it is inherent that the operator must grasp the handle 5) of a tool having a distally extending shaft (2) having a working end with an open, longitudinal slot (9) with distal longitudinal segments (8); and
- b. Sliding the working end of said tool over said tab, to receive said tab into said slot (step is not shown but is inherent to achieve the following step shown in Fig. 7);
- c. Rotating said tool about its longitudinal axis to sever said top from said can (rotation in direction of arrow 13 in Fig. 7 is about the longitudinal axis); and
- d. Retracting said tool from said top by withdrawing said tool in a longitudinal direction substantially along its longitudinal axis (although this step is not shown, it is inherently the only way to remove the tool from the lid once the lid is rolled around the shaft of the tool, which is necessary to remove the lid from the container).

18. In reference to claim 12, Osmar further discloses that said tab has a loop portion closely adjacent to the top surface of said container top, including the step of inserting the tip of said shaft beneath said loop portion and prying said loop portion to erect said loop portion above said container top, preparatory to step b (Fig. 6).

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osmar et al (5,095,777) in view of Hughes (4,723,465).

21. In reference to claim 1, Osmar discloses a tool comprising a shaft (2) with one end terminating in a torque transmitting means (5) and, at its opposite end, having a working end, said working end having a slot (9) open to the end of said shaft and extending longitudinally along said shaft dividing said working end of said tool into two longitudinal segments (8), one of said longitudinal segments terminating in a blade with a blade tip having thickness less than the thickness of said one longitudinal segment. However, Osmar fails to disclose that one of said longitudinal segments extends beyond the terminus of the other segment. Hughes discloses a bottle cap and can tab opener which comprises a working end having a slot (18) open to the end of said shaft and extending longitudinally along said shaft dividing said working end of said tool into two longitudinal segments (34 and 36) and teaches that projection 20 is located on one segment 34 and extends beyond the other segment 36 to engage the fulcrum area 44 of lever (or tab 38) and this orientation prevents the opener from bending or breaking the lever or tab 38 (col. 3, lines 41-51). It is obvious that it is advantageous to prevent

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breakage of the tab because the tab allows easy removal of the lid and the lid would be very hard to remove if the tab were broken. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to extend one of the longitudinal segments of the Osmar apparatus beyond the other longitudinal segment such that, when prying the tab upwards, the Osmar invention prevents the tab from breaking or bending, as taught by Hughes.

22. In reference to claim 2, Osmar further discloses that the torque transmitting means comprises a handle (5), which fixedly receives the shaft (handle and shaft are one piece, thus the shaft is inherently fixed to the handle).

23. In reference to claims 4 and 5, Osmar does not specifically disclose the dimensions of the slot but does show (figures 6 and 7) that the loop of a conventional pull tab is loosely received in the slot. In view of the applicant's disclosure that a slot length between 0.75 and 1 inch and a slot thickness between 0.085 and 0.125 inches is sufficient to loosely receive the loop of a conventional pull tab (page 2, line 25-27), it is inherent that the slot of Osmar has a length between 0.75 and 1 inch and a thickness between 0.085 and 0.125 inches.

24. In reference to claim 6, Osmar further discloses that the blade tip is flattened (best seen in Fig. 3, wherein the central portion of the blade tip 4 is clearly flat).

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dyer (3,460,411), Kroeger (4,583,429), Simpson (3,151,764),

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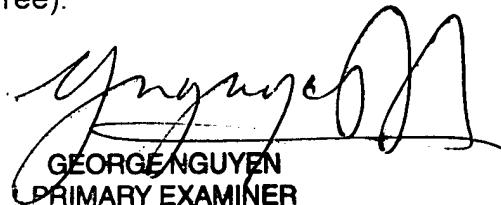
Kaplan (3,025,994) Korpi (50,949), Eve et al (5,913,953) and Wishart (2,624,489) all disclose can openers with similar structure to the applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan R. Muller whose telephone number is (571) 272-4489. The examiner can normally be reached on Monday thru Thursday and second Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BRM
1/4/2006



GEORGE NGUYEN
PRIMARY EXAMINER